IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7330 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PLASTO-O-FINE INDUSTRIES THR' ITS PARTNER VIVEK - Petitioner(s)

Versus

PASCHIM GUJARAT VIJ CO. PVT. LTD., & 1 - Respondent(s)

==========

Appearance :

MR PM THAKKER WITH MR CL SONI for Petitioner
MS LILU K BHAYA for Respondent(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/01/2006

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has payed for appropriate writ, order and/or directions to quash and set aside the actions of the respondents of insisting for clearing the dues of earlier consumer namely M/s.Kash Brush Manufacturing Company for providing electric connection to the petitioner a Shed Nos.271 and 276 (A-II Type), Sector III, Kandla Free Trade Zone, Gandhinagar.

2. It is the case on behalf of the petitioner that the aforesaid Shed were earlier alloted to one M/s.Kash Brush Manufacturing Company and order of eviction came to be passed by the Development Commissioner (KFTZ) under the

provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and that the Dy. Development Commissioner (KFTZ) allotted the said plots to the petitioner w.e.f.26/8/1999. It is also the case of the petitioner that thereafter the petitioner got the possession of the Sheds in question after entering into necessary agreements and thereafter, it applied for new electric connection and paid necessary fees on 1/3/2000. It is also the case on behalf of the petitioner that the petitioner was informed by the respondent by communication dtd.3/5/2000 that there was Civil Suit No.35 of 1999 pending with respect of the Sheds in question for recovery of Rs.5.10 Lacs from the erstwhile owner and without clearing the said outstanding amount, the application of the petitioner can not be processed for releasing the energy connection. It is also the case of the petitioner that immediately thereafter, the petitioner approached the Dy.Development

Commissioner vide communication dtd.26/5/2000 and requested to see that the electric connection is released by the Gujarat Electricity Board. That the Appraiser (Estate) (KFTZ) addressed a letter dtd.1/6/2000 to Gujarat Electricity Board stating that the petitioner has nothing to do with the earlier owner namely M/s.Kash Brush Manufacturing Company and the Gujarat Electricity Board was requested to provide power connection to the petitioner. However, since nothing was done by the Gujarat Electricity Board, the present petition came to be filed by the petitioner for the aforesaid relief.

3. Mr.P.M. Thakker, learned senior advocate appearing on behalf of the petitioner with Mr.C.L. Soni learned advocate has relied upon the judgement of the Hon'ble Supreme Court in the case of ISHA MARBLES VS. BIHAR ELECTRICITY BOARD & ANR, reported in 1995(2) GLH 134 and has submitted that the petitioner could not be held

liable to pay the dues of erstwhile owner in absence of any statutory provisions and that the insistence on the part of the respondents to pay the amount due and payable by the erstwhile owner as a pre-condition of electricity supply and/or connection is illegal and most arbitrary. Consequently, it is requested to allow the present petition.

4. Ms.Lilu K. Bhaya, learned advocate appearing on behalf of the respondent Company is not in a position to dispute that the petitioner applied for new connection prior to insertion of Condition No.2(J)of the Condition of Supply and that even the dues of the erstwhile owner are also of prior to the date of the insertion of the Condition No.2(J) i.e. prior to August, 2001.

5. In view of the decision of the Hon'ble Supreme Court in the case of ISHA MARBLES (Supra) wherein the Hon'ble Supreme Court has held that

the auction purchaser cannot be saddled with the contractual liability of the original defaulter. Therefore, the insistence on the part of the respondent directing the petitioner to clear the dues of the erstwhile owner for getting the electricity connection and/or re-connection of the electricity supply is not legally sustainable and it is contrary to the law laid down by the Hon'ble Supreme Court in the case of ISHA MARBLES (Supra). In the present case, admittedly the dues of the erstwhile owner are of prior to the date of the insertion of Sec.2(J) of Condition of Supply and even the application for fresh connection and/or re-connection was also prior to the insertion of Condition No.2(J). It is also required to be noted that by Condition No.2(J), the GEB is authorized to recover the dues of the erstwhile owner from the subsequent purchaser, while considering the request of the subsequent purchaser for re-connection and/or new connection in the said premises. Therefore, when the

petitioner purchased the property in question at the relevant time and requested for re-connection, there was no Condition No.2(J) in existence. Under the circumstances, the case of the petitioner is directly covered by the judgement of the Hon'ble Supreme Court in the case of ISHA MARBLES and the insistence on the part of the respondent Company directing the petitioner to clear the dues of erstwhile owner namely M/s.Kash Brush Manufacturing Company is illegal and requires to be quashed and set aside and the respondent Company is required to be directed to give electricity connection to the petitioner without insisting for payment of the dues due and payable by the erstwhile owner namely M/s.Kash Brush Manufacturing Company to the respondent Company.

6. For the reasons stated hereinabove, the petition succeeds. The respondents are directed to consider the case of the petitioner for supply

of the electricity connection without insisting upon the petitioner to pay the dues of the previous owner namely M/s.Kash Brush Manufacturing Company. However, it is made clear that the petitioner be given electric connection if the petitioner is otherwise so entitled and meets with the requirement of the respondent Company including the payment of the necessary charges for power connection. Such exercise to be done as expeditiously as possible, preferably within a period of TWO WEEKS from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

rafik